Testimony

House Bill 1291

House Agriculture Committee

Thursday, January 27, 2005; 10:30 a.m.

North Dakota Department of Health

Good morning, Chairman Nicholas and members of the House Agriculture Committee. My name is David Glatt, and I am section chief of the Environmental Health Section for the North Dakota Department of Health. I am here today to provide testimony in opposition of House Bill 1291.

House Bill 1291 amends an existing odor law by directing that air quality impacts associated with open air feedlots be limited to the monitoring of hydrogen sulfide. The department is aware of the issues expressed by all concerned parties and of the effort by the state Legislature to find a resolution to this important issue. It is our opinion that past legislation addressing odor measurement has resulted in the current law that is equitable and fair. As such, we respectfully request a do-not-pass determination for House Bill 1291.

The current odor law works by protecting the rights of both producers and rural residents. Since the revision of the rules in the 1999 legislative session that instituted a "first in time, first in right" doctrine, the department has recorded only three odor violations at two different animal feeding operations. Putting these violations into context, these are two facilities out of 545 permitted operations, or less than 0.4 percent of the operations in the state. It is important to note that one of these violations was from a facility less than one-quarter mile from an established rural residence; the other was within a city zoning authority. If the change in the law is being proposed due to a reported adverse impact on the animal feeding operations in the state, the monitoring and enforcement data do not support such a determination.

Because odors can be composed of a combination of several hundred compounds, no electronic instrument has been developed to measure odors. Scientists have tried to develop an "electric nose" but have not developed one to date. Scientists have also tried to utilize "indicator gases" for livestock operations which, in theory, would be in higher concentrations in strong-odor conditions and lower concentrations in low-odor conditions. To date, there has been no indicator gas identified for livestock operations. Of note, states that use hydrogen sulfide as a standard indicate that they have not seen any correlation between odors and the hydrogen sulfide concentration at open lot feeding operations. In

other words, significant odors could be present without the presence of hydrogen sulfide.

Several states besides North Dakota utilize the Scentometer to measure odor concentrations. In North Dakota, the odor threshold at which a problem is identified is seven odor units. To put this in perspective, the department has conducted several monitoring events at sugar beet and potato processing facilities in eastern North Dakota. Using the criteria identified in the current law requiring a one-half mile setback from the source, the department has not recorded an odor violation at these facilities. As a result, the odors that many people notice and attribute to these processing facilities would have to be of a greater intensity to cause a violation. Odors needed to cause a violation are typically characterized as significant and offensive. The Scentometer as used in North Dakota has been recognized by several states as a valid method of odor determination. The Scentometer uses scientific principles and produce readings that can be replicated.

States have not taken a consistent approach to address odors generated from animal feeding operations. However, most, if not all, states address odor issues either at the state or local level. State approaches have included the use of Scentometers, increased permit restrictions, setbacks, deferring to local jurisdictions to implement odor restrictions, requirements for modeling and continuous monitoring, and implementation of odor management plans. The bottom line is that odors from livestock operations can be an issue, and states have realized the need to address them.

The Environmental Protection Agency is currently embarking on an enforcement action which will address the emission of air pollutants from certain animal feeding operations. With this action EPA will also be initiating a research effort to identify the odor constituents of concern as well as the appropriate modeling, monitoring and control techniques. This research effort is anticipated to be completed in two years. One recommendation would be to evaluate the results from the EPA study before any further action is proposed by the state.

In conclusion, the regulation and control of odors have taken many forms in states throughout the nation. Each one addresses the unique issues and concerns expressed in its respective jurisdictions. These odor-control measures typically take a complex approach drawing on several regulatory, technical and operational tools, such as permitting, monitoring and zoning. North Dakota's current law has worked for a vast majority of the ag-related operations in the state and will continue to work to protect both the producer and rural landowner.

This concludes my testimony. I am happy to answer any questions you may have.